



**THE CITY OF NEW YORK
LAW DEPARTMENT**

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March 31, 2023

VIA ECF

The Honorable Lewis J. Liman
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 11201

Re: Labombard v. Harrel, et al., 22-CV-2196 (LJL)

Your Honor:

I am an Assistant Corporation Counsel in the Office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of York, and the attorney representing the City in this matter. I write to request clarification regarding the City's deadline to respond to plaintiff's amended complaint, given the somewhat current procedural posture.

Plaintiff initially brought this case pro se on March 16, 2022, alleging that former-CO Brian Harrell assaulted him numerous times while in DOC custody. (ECF No. 2). In the original filing, plaintiff named Harrell, an unnamed warden of the facility, and the City of New York as defendants. (Id.). On December 13, 2022, the City, who was and still remains the only defendant served in this matter, moved for dismissal under Fed. R. 12(b)(6). (ECF Nos. 26, 27, 28). Shortly thereafter, the City asked for a stay of discovery on this matter pending the Court's ruling on its motion to dismiss. (ECF No. 29).

After the January 18, 2023 initial conference in this case, the Court issued a Valentin order directing the City to provide the name of the unidentified warden and the addresses of both that defendant and Brian Harrel; the City timely complied with these requests. (ECF No. 31, 39). In the Valentin order, the Court also set a conference for June 8, 2023 and noted that "a stay of proceedings in this case (including of the time for Plaintiff to respond to the pending motion to dismiss) and of discovery will be in effect until that date." A separate order also dated on January 18 granted plaintiff's application for pro bono counsel, and opposing counsel assumed this

representation on February 6, 2023 (ECF Nos. 33, 38). Plaintiff's properly filed his first amended complaint on March 20, 2023,¹ and, that same day, the Court denied the City's 12(b)(6) motion as moot. (ECF Nos. 45, 47).

As an initial note, the City notes that the docket contains no entry that definitively has modified the current stay of proceedings in this matter, such that the City has been operating under the assumption that its response to the first amended complaint currently has no set deadline and will be determined at the June 8 conference. Additionally, plaintiff's counsel has indicated that he has no objection to following the Court's scheduling directive as articulated in the January 18, 2023 order.² However, given that the Court issued the order when plaintiff remained pro se and the case appears, at least in some respects, to not be entirely stayed, the City writes today seeking clarification on its responsibility to answer plaintiff's first amended complaint to avoid inadvertently missing its deadline to respond to the operative pleading.


The City believes that the current stay is beneficial for all parties, as it will allow time for plaintiff to effectuate service of the unnamed defendants. Accordingly, the City asks that stay remain in effect, and that its time to answer will be determined following the June 8, 2023 conference. In the alternative, the City asks the Court to construe this letter as a request for an extension *sine die* to respond to the amended complaint, the deadline for which would be set at the June 6, 2023 conference in this matter.

Thank you for your consideration herein.


Respectfully Submitted,

ORDER: The stay shall remain in effect through the June 8, 2023 conference. The date by which Defendants must answer the amended complaint shall be determined at the June 8 conference.

Date: 4/5/2023

SO ORDERED.

LEWIS J. LIMAN
United States District Judge

cc: **VIA ECF**
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¹ Plaintiff attempted to file this document on March 13, 2023, but it was rejected as a deficient filing. (ECF No. 44). Accordingly, the Court did not dismiss defendant's motion to dismiss until the pleading was properly filed on March 20, 2023.

² Plaintiff's counsel has also informed the City that his process server is currently working to effectuate service on the individual defendants.